Mail copies of the Accusation No. 4438, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code section 4100, is required to be reported and maintained with the Board. Respondent's address of record was and is: 2180 Carlmont Drive 3, Belmont, CA 94002.

- 4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c) and/or Business & Professions Code section 124.
 - 5. Government Code section 11506 states, in pertinent part:
 - (c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.
- 6. Respondent failed to file a Notice of Defense within 15 days after service upon her of the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4438.
 - 7. California Government Code section 11520 states, in pertinent part:
 - (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.
- 8. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Accusation No. 4438, finds that the charges and allegations in Accusation No. 4438, are separately and severally, found to be true and correct by clear and convincing evidence.
- 9. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$2,905.50 as of January 18, 2013.

DETERMINATION OF ISSUES

- 1. Based on the foregoing findings of fact, Respondent Denise Elizabeth Adams has subjected her Pharmacy Technician License No. TCH 56794 to discipline.
 - 2. The agency has jurisdiction to adjudicate this case by default.
- 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician License based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Evidence Packet in this case:
- a. Respondent's License is subject to revocation pursuant to Business and Professions section 4301, subdivision (l), for conviction of a substantially related crime(s), because on or about December 12, 2011, in the criminal case, *People v. Denise Elizabeth Adams*, Case No. SC073222A in San Mateo County Superior Court, Respondent was convicted of violating (1) Penal Code section 273a, subdivision (a) (Willful harm or injury to child), a misdemeanor, and (2)Vehicle Code section 23152, subdivision(b) (Driving with blood alcohol level of .0.08% or more), a misdemeanor.
- b. Respondent's License is subject to revocation pursuant to Business and Professions Code section 4301, subdivision (k), because Respondent, as described above, was convicted of more than one misdemeanor, involving the use, consumption, or self-administration of an alcoholic beverage.
- c. Respondent's License is subject to revocation pursuant to Business and Professions Code section 4301, subdivision (h), because Respondent, as described above, used alcoholic beverages in a dangerous or injurious manner.
- d. Respondent's License is subject to revocation pursuant to Business and Professions Code section 4301, because Respondent, as described above, engaged in unprofessional conduct.

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ORDER IT IS SO ORDERED that Pharmacy Technician License No. TCH 56794, heretofore issued to Respondent Denise Elizabeth Adams, is revoked. Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute. This Decision shall become effective on April 17, 2013. It is so ORDERED ON March 18, 2013. **BOARD OF PHARMACY** DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA (. Wusi **Board President** 40642386.DOC DOJ Matter ID:SF2012402722 Attachment: Exhibit A: Accusation

Exhibit A

Accusation

1	KAMALA D. HARRIS Attorney General of California		
2	Frank H. Pacoe		
3	Supervising Deputy Attorney General JOSHUA A. ROOM		
4	Deputy Attorney General State Bar No. 214663		
5	455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004		
6	Telephone: (415) 703-1299 Facsimile: (415) 703-5480		
7	Attorneys for Complainant	·	
8	BEFORE THE BOARD OF PHARMACY		
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
10		1 .	
11	In the Matter of the Accusation Against:	Case No. 4438	
12	DENISE ELIZABETH ADAMS 2180 Carlmont Drive 3 Belmont, CA 94002	,	
13		ACCUSATION	
14	Pharmacy Technician License No. TCH 56794		
15	Respondent.		
16			
17	Complainant alleges:		
18	<u>PARTIES</u>		
19	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity		
20	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.		
21	2. On or about June 10, 2004, the Board of Pharmacy issued Pharmacy Technician		
22	License Number TCH 56794 to Denise Elizabeth Adams (Respondent). The Pharmacy		
23	Technician License was in full force and effect at all times relevant to the charges brought herein		
24	and will expire on September 30, 2013, unless renewed.		
25.	JURISDICTION		
26	3. This Accusation is brought before the Board of Pharmacy (Board), Department of		
. 27	Consumer Affairs, under the authority of the following laws. All section references are to the		
28	Business and Professions Code (Code) unless otherwise indicated.		
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4. Section 4300, subdivision (a) of the Code provides that every license issued by the Board may be suspended or revoked.

5. Section 118, subdivision (b) of the Code provides, in pertinent part, that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Section 4402, subdivision (a) of the Code provides that any pharmacist license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period. Section 4402, subdivision (e) of the Code provides that any other license issued by the Board may be canceled by the Board if not renewed within 60 days after its expiration, and any license canceled in this fashion may not be reissued but will instead require a new application to seek reissuance.

STATUTORY AND REGULATORY PROVISIONS

6. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

...

"(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

• • •

"(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

- "(1) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter."
- 7. Section 490 of the Code provides, in pertinent part, that a Board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.
 - 8. California Code of Regulations, title 16, section 1770, states:

"For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare."

COST RECOVERY

9. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FACTUAL BACKGROUND

10. On or about March 20, 2011, Respondent drove her car into a directional sign, damaging the vehicle and the sign. Respondent was speeding in heavy rain and had her four year-old and eleven year-old sons in the vehicle at the time of the collision. The responding officer noticed that Respondent exhibited signs of alcohol intoxication and questioned Respondent about her actions. Respondent admitted she had two normal sized beers at a friend's house prior to driving, that her car's tires were bald, and that she was traveling too fast in the rain. Respondent failed field sobriety testing, and testing at the county jail showed her blood alcohol level to be 0.23%.

(Conviction of Substantially Related Crime(s))

- Respondent is subject to disciplinary action under section 4301, subdivision (l) and/or section 490 of the Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of substantially related crime(s), in that on or about December 12, 2011, in the criminal case *People v. Denise Elizabeth Adams*, Case No. SC073222A in San Mateo County Superior Court, Respondent was convicted on the basis of the conduct described in paragraph 10 of violating (1) Penal Code section 273a, subdivision (a) (Willful harm or injury to child), a misdemeanor, and (2) Vehicle Code section 23152, subdivision (b) (Driving with blood alcohol level of 0.08% or more), a misdemeanor. The conviction was entered as follows:
- a. On or about April 12, 2011, based on the conduct described in paragraph 10, Respondent was charged by criminal Complaint in Case No. SC073222A with one count of violating (1) Penal Code section 273a, subdivision (a) (Willful harm or injury to child), a misdemeanor, (2) Penal Code section 273a, subdivision (a) (Willful harm or injury to child), a felony, (3) Vehicle Code section 23152, subdivision (a) (Driving under influence of alcohol or drugs), a misdemeanor, and (4) Vehicle Code section 23152, subdivision (b) (Driving with blood alcohol level of 0.08% or more), a misdemeanor, with special allegations for having blood alcohol of 0.15% or more under Vehicle Code section 23578, and for having minors under 14 years of age in the vehicle at the time of the offense under Vehicle Code section 23572.
- b. On or about December 12, 2011, Respondent pleaded no contest to the first count of violating Penal Code section 273a, subdivision (a) (Willful harm or injury to child), a misdemeanor, and no contest to the count of violating Vehicle Code section 23152, subdivision (b) (Driving with blood alcohol level of 0.08% or more), a misdemeanor. Court documents established her blood alcohol as 0.23%. All other counts and enhancements were dismissed pursuant to the plea.

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c. On or about February 10, 2012, the court ordered imposition of sentence suspended in favor of a four year supervised probation period with terms and conditions including 60 days in jail (2 days CTS), one year of a Child Abuser's Treatment Counseling program, a First Offender DUI program, and fines and fees.

SECOND CAUSE FOR DISCIPLINE

(Multiple Convictions Involving Alcohol)

12. Respondent is subject to disciplinary action under section 4301, subdivision (k) of the Code, in that Respondent, as described in paragraph 10, was convicted of more than one misdemeanor or a felony involving the use, consumption, or self-administration of an alcoholic beverage.

THIRD CAUSE FOR DISCIPLINE

(Self-Administration of Controlled Substance and/or Alcohol)

13. Respondent is subject to disciplinary action under section 4301, subdivision (h) of the Code, in that Respondent, as described in paragraph 10, used alcoholic beverages in a dangerous or injurious manner.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

14. Respondent is subject to disciplinary action under section 4301 of the Code in that, as described in paragraph 10, Respondent engaged in unprofessional conduct.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

- 1. Revoking or suspending Pharmacy Technician License Number TCH 56794, issued to Denise Elizabeth Adams;
- Ordering Denise Elizabeth Adams to pay the Board of Pharmacy the reasonable costs
 of the investigation and enforcement of this case, pursuant to Business and Professions Code
 section 125.3;

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1	3. Taking such other and further action as is deemed necessary and proper.	
2	DATED III/alto	
3	DATED: 11/19/12	VIRGINIA HEROLD
4		Executive Officer Board of Pharmacy
5		Board of Pharmacy Department of Consumer Affairs State of California
6		Complainant
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